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December 15, 1998

1231-12078.1

VIA FEDERAL EXPRESS

Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, DC 20554

Re: NSD File No. L-97-42; CC Docket No. 96-98;
In the Matter of Petition for Declaratory Ruling and
Request for Expedited Action on the July 15, 1997 Order of
the Pennsylvania Public Utilities Commission Regarding
Area Codes 412, 610, 215 and 717

Dear Ms. Salas:

Enclosed for filing in the above matter please find one original and five copies of the *Petition Of The California Cable Television Association For Reconsideration.* As I discussed with Deputy Secretary Caton earlier today, I have left the original loose with a clip but have acco-fastened the copies. Kindly stamp one copy and return it to us in the enclosed stamped, self-addressed envelope.

Thank you for your courtesy and assistance.

Sincerely,

Mark Fogelman

MF/mbd
Enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of	
Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717	NSD File No. L-97-42
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	CC Docket No. 96-98

PETITION OF THE CALIFORNIA CABLE TELEVISION ASSOCIATION FOR RECONSIDERATION

The California Cable Television Association ("CCTA") respectfully petitions the Commission for reconsideration of its *Memorandum Opinion and Order and Order on Reconsideration* ("*Pennsylvania Order*"), FCC 98-224, adopted in the above-captioned proceeding September 11, 1998, released September 28, 1998, and publicly noticed November 16, 1998.[1] CCTA also wishes to state its support for the separate petitions for reconsideration ("PFRs") filed herein by the California Public Utilities Commission ("CPUC" or "California Commission") and by MediaOne Group, Inc. ("MediaOne").

For the reasons here stated, CCTA believes that in its effort to impose a "technologically neutral" uniform numbering policy, the Commission's order has

[1] *See* 63 Fed. Reg. 63613 (Nov. 16, 1998).

unnecessarily harmed the ability of facilities-based competitive local exchange carriers ("CLECs") – carriers that have expressly assumed the obligation of serving residential as well as business customers – to compete fairly with incumbent local exchange carriers ("ILECs"). The *Pennsylvania Order* has thus unnecessarily and inappropriately impeded the pro-competitive purposes of the Telecommunications Act of 1996 ("1996 Act").[2]

Moreover, the *Pennsylvania Order* was adopted without the benefit of the Commission's considering fully the position of the disadvantaged CLECs. In this declaratory order proceeding addressing the propriety of particular orders of the Pennsylvania Public Utility Commission ("Pennsylvania Commission"), CCTA had no clear notice of the Commission's intention to issue broad rules of general applicability prohibiting *any* state commission – even in the face of undisputed critical statewide NXX code shortages as exist in California – from developing and implementing reasonable NXX code conservation and rationing measures unless "the state commission has decided on a specific form of area code relief (*i.e.*, a split, overlay, or boundary realignment) and has established an implementation date for that relief."[3] CCTA could not reasonably have anticipated the necessity of its participation prior to issuance of the order. The unanticipated breadth of the order stating general rules of nationwide applicability necessitates CCTA's current participation and its having a full opportunity to present new facts to the Commission.

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[2] Pub. L. 104-104, 110 Stat. 56 (Feb. 8, 1996), *codified in part at and amending* the Communications Act of 1934, 47 U.S.C. §§ 151, *et seq.*

[3] *Pennsylvania Order*, ¶¶ 24, 25 and App. B, *amending* 47 C.F.R. § 52.19(a).

All facts relied on in this petition and supporting exhibits should be considered by the Commission because issuance of the *Pennsylvania Order* constitutes changed circumstances, because CCTA could not reasonably have assumed that its participation in connection with the matter would be necessary prior to the ruling, and because consideration of such facts is required by the public interest.[4] CCTA respectfully requests that the Commission consider fully the arguments and evidence contained in this petition for reconsideration and enter an order on reconsideration altering the *Pennsylvania Order* in the manner hereinafter specified.

PRELIMINARY STATEMENT

CCTA, an industry association of California cable service providers, is the largest state cable telecommunications association in the country. Its members include more than 350 cable television systems serving more than 1,350 communities, passing more than 10.5 million homes and having more than 6.6 million subscribers.

Recently, CCTA member companies have begun to move aggressively in new competitive directions. Many have made the substantial financial investment necessary and have begun to roll out telephony and/or high speed data services. A number of CCTA members are currently certificated by the CPUC as CLECs, and several – notably Cox, MediaOne and TCI – are currently providing facilities-based local exchange service to residential customers in California under an obligation to

[4] 47 C.F.R. §§ 1.106, 1.429.

serve imposed by the CPUC. Other CCTA members are preparing to enter these markets as well.

The Commission's willingness to address aggressively the growing numbering crisis in North America is a welcome and highly laudable development since CCTA's member companies have found the unavailability of telephone numbers to be a serious impediment to rolling out service. Nevertheless, CCTA and its member companies are adversely affected by the *Pennsylvania Order* because the order impedes the free entry of new competitors – particularly facilities-based competitors seeking to serve residential customers – into the California local exchange market by reducing the CPUC's authority to deal effectively with the severe crisis of NXX code exhaustion existing in most California NPAs.[5] The *Pennsylvania Order* precludes NXX code rationing and conservation measures by a state commission unless and until "the state commission has decided on a specific form of area code relief . . . and has established an implementation date for that relief."[6]

The existence of a critical NXX code shortage in California is not seriously subject to dispute. In its recent decision granting California a temporary exemption from the *Pennsylvania Order* that would permit it to continue to conduct its NXX code lotteries, the Common Carrier Bureau correctly observed that

[5] As noted in the *Pennsylvania Order*, at ¶ 3, the first three digits of a ten-digit telephone number reflect the Numbering Plan Area ("NPA") code, or area code, while the second three digits reflect the NXX code, or central office code, which is assigned to a particular rate center in an NPA. A complete NXX code includes 10,000 line numbers (0000-9999).

[6] *Pennsylvania Order*, ¶¶ 24, 25 and App. B, *amending* 47 C.F.R. § 52.19(a).

"extenuating circumstances exist in California, which are unique in the United States."[7]

The Common Carrier Bureau went on:

> As of December 1998, California will have 23 area codes, more than any other state. Since January 1, 1997, the industry, the California Public Utilities Commission (California Commission), and the North American Numbering Plan Administrator (NANPA) will have implemented 10 area code relief plans. Furthermore, the majority of California's areas codes are in jeopardy. The Legislature in California has enacted statutes, to be effective January 1, 1999, which contain detailed meeting and notice requirements designed to "afford affected customers an opportunity to discuss the potential impact of the proposed area code relief options and measures that may be taken to mitigate potential disruptions." California Assembly Bill 2716, adding Section 7931 to the California Public Utilities Code, at (e)(2). The meeting requirements and most of the notice requirements of the statutes must be complied with prior to industry submission of an area code relief plan to the California Commission. . . . [B]y industry practice and by statute, an area code relief plan may be adopted only after receiving this industry recommendation.[8]

Indeed, the dire circumstances facing California were underscored just last week by NANPA's[9] issuance of a declaration of jeopardy for the 707 NPA. Until NANPA's action, the 707 NPA was the sole remaining California NPA not declared to be in jeopardy that has not already been part of an area code relief plan mandated

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[7] Letter granting temporary authority to CPUC to continue to conduct central office code rationing measures, p. 2, NSD File No. L-98-136 (Dec. 1, 1998), a true copy of which is attached hereto as Appendix A.

[8] *Id.* at 1-2 (footnotes omitted). The Common Carrier Bureau letter refers to California's petition for authority to conduct NXX code rationing, NSD File No. L-98-136 (Nov. 3, 1998), a true copy of which is attached hereto as Appendix B.

[9] "NANPA" refers to the North American Numbering Plan Administrator, Lockheed Martin IMS.

by the CPUC.[10] Even more dramatic is the outcome of NANPA's "Special California COCUS Results" of December 10, 1998, a survey that forecasts total NXX code demand for California from First Quarter 1999 to Fourth Quarter 2001 to be 8,390 – *the equivalent of 10.6 new area codes.*[11]

CCTA respectfully requests that the Commission reconsider the *Pennsylvania Order* and clarify that the CPUC and other state commissions possess sufficient authority to determine and implement reasonable NXX code rationing measures without regard to whether an area code relief plan has been adopted and an implementation date set.

The *Pennsylvania Order* violates the standards of 5 U.S.C. § 706 because it precludes state commissions facing serious NXX code shortages from fashioning and implementing measures that would forestall the need for area code relief *before* area code relief is imposed. Requiring state commissions to defer measures that would forestall a crisis until after the crisis has arisen is neither sound public policy nor rational decisionmaking. The *Pennsylvania Order* effectively prohibits states from closing the barn door before the horses are out.[12]

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[10] *See* NANPA Declaration of Jeopardy for 707 NPA (Dec. 4, 1998), a true copy of which is attached hereto as Appendix C.

[11] Relevant excerpts from the Special California COCUS Results are attached hereto as Appendix D.

[12] CCTA agrees with the Commission's observation that "[s]tate commissions [should] not use conservation measures as substitutes for area code relief or to avoid making difficult and potentially unpopular decisions on area code relief." *Pennsylvania Order*, ¶ 26. However, CCTA submits that delaying state action to conserve numbers until a new area code has effectively been put in place puts the cart before the horse. Once jeopardy has been declared, if not before, states must be permitted to effectuate reasonable conservation and rationing measures. A contrary rule promotes crises, rather than forestalling them, and engenders waste.

The *Pennsylvania Order* also violates the standards of § 706 because it erects significant barriers to entry by facilities-based CLECs seeking to serve residential customers, in violation of the central purposes, and a number of the specific provisions, of the 1996 Act. The order's deferral of state-approved rationing plans such as California's NXX code lottery threatens to leave new entrants (but not incumbent LECs) without numbers to assign and hence without the ability to offer service. The order eliminates the ability of states to adopt rationing measures which give a preference to facilities-based entrants seeking to serve residential customers and thus thwarts two of the Act's primary purposes – engendering facilities-based competition and ensuring competitive entry in residential markets. It precludes states from implementing mandatory number pooling trials – trials in which incumbents are required to participate – and thus disadvantages new entrants by precluding states from exploring meaningful code conservation solutions. It effectively precludes states from engaging in rate center consolidation.[13] It fails to clarify that only a governmental agency charged with the responsibility for serving the public interest, such as a state commission or the Commission itself, is obliged to carry out the statutory mandate of ensuring effective competition and that neither NANC[14] nor NANPA has that overarching mission. And in prohibiting states from implementing

[13] The *Pennsylvania Order*, at ¶ 29, does "encourage . . . state commissions to consider other measures and activities, such as rate center consolidation." However, the order is not clear whether measures such as rate center consolidation are permitted before a relief plan is adopted and an implementation date set. This PFR therefore assumes that rate center consolidation prior to adoption of a relief plan is prohibited, and asks the Commission for clarification on this point.

[14] "NANC" refers to the North American Numbering Council.

conservation and rationing measures before a new area code is required to be added, the order pushes states toward the premature imposition of overlays which remain highly anticompetitive and unpopular with customers, even with the implementation of mandatory ten-digit dialing and local number portability.

The Commission should reconsider the *Pennsylvania Order* and enter a new order clarifying that states may require rate center consolidation independent of any final NPA-specific relief plan. It should clarify that states have the authority to determine, on a proper record, that permissible rationing measures may include the grant of a preference for facilities-based carriers serving residential markets. It should further clarify that the authority to take such pro-competitive actions rests with the states and the Commission, not with non-governmental entities such as NANC and NANPA, and that the Commission itself will act to ensure that state determinations facilitate competition, should the states fail to do so.

The Commission should clarify that states may impose number-pooling trials – including single-line pooling and 1,000-block pooling – in which incumbent LECs are required to participate. It should acknowledge the continuing anticompetitive nature of overlays, even where ten-digit dialing and local number portability have been implemented, and that overlays will remain anticompetitive until conservation measures that reach into the incumbent's base of unused numbers associated with the original area code are implemented. Finally, in taking these actions, the Commission should be mindful that new facilities-based entrants have made significant network investments in order to compete with incumbents and that delay in and limitations on their fair access to NXX codes create serious impediments

to competitive entry. The Commission should therefore act expeditiously in its order on reconsideration to establish any necessary interim guidelines and to confirm state authority within those guidelines to implement rate center consolidation, mandatory pooling trials and rationing measures which promote competition and are consistent with the purposes of the 1996 Act.

BACKGROUND

In this proceeding, five cellular carriers petitioned the Commission for a declaratory order preempting a July 15, 1997, order, and subsequent orders, of the Pennsylvania Public Utility Commission.[15] The challenged orders "required implementation of [interim] transparent area code overlays and, eventually, number pooling, to relieve the need for additional NXX codes in area codes 215, 610, and 717."[16]

Although the actions of the Pennsylvania Commission relating to those area codes were largely mooted by its subsequent imposition of "conventional" relief,[17] the Commission nevertheless took the opportunity to issue broad rules of nationwide applicability. The *Pennsylvania Order* concluded that "[a] state commission may order rationing only if it has ordered relief and established an implementation date, and the industry is unable to agree on a rationing plan."[18] It

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[15] *Pennsylvania Order*, ¶ 1.

[16] *Id.*, ¶ 11.

[17] *Id.*, ¶¶ 15-17; *see also* Letter of Common Carrier Bureau responding to Pennsylvania Commission, NSD File No. L-97-42 (Dec. 2, 1998), a true copy of which is attached hereto as Appendix E.

[18] *Pennsylvania Order*, ¶ 25; *see also id.*, ¶ 24 and App. B.

stated that "state commissions do not have authority to order return of NXX codes or 1,000 number blocks to the code administrator."[19] It "decline[d] to grant states the authority to order mandatory number pooling."[20] It further "decline[d] to delegate to state commissions the authority to order number pooling, in view of the activity occurring at the federal level to develop such national standards."[21] In addition, while "encourag[ing] . . . state commissions to consider other measures and activities, such as rate center consolidation, that affect number usage and may decrease the frequency of the need for area code relief,"[22] it nevertheless did not expressly authorize state commissions to implement rate center consolidation in the absence of a required relief plan and an associated implementation date.

The *Pennsylvania Order* also stated that the *Second Report and Order*[23] "delegated to state commissions authority to implement new area codes" but did not delegate "jurisdiction over numbering issues."[24] However, the *Pennsylvania Order* failed to acknowledge that the imposition of measures that would defer the inevitable need for area code relief is a fundamental component of addressing area code relief. Finally, while it stated rules of broad applicability, the *Pennsylvania Order* was

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[19] *Id.*, ¶ 24.

[20] *Id.*

[21] *Id.*, ¶ 27.

[22] *Id.*, ¶ 29.

[23] 11 FCC Rcd 19392 (1996), *vacated in part on other grounds, California v. FCC*, 124 F.3d 934 (8th Cir. 1997), *cert. granted sub nom AT&T Corp. v. Iowa Utils. Bd.*, U.S.S.C Nos. 97-826, *et al.*, 118 S. Ct. 879 (Jan. 26, 1998).

[24] *Pennsylvania Order*, ¶ 32.

narrowly predicated on a record specific to claims concerning the discretionary service of wireless and non-LRN carriers.[25]

ARGUMENT

I

THE COMMISSION SHOULD RECONSIDER ITS CONCLUSION THAT NXX CODE CONSERVATION AND RATIONING MEASURES MAY NOT BE IMPLEMENTED BY A STATE COMMISSION UNTIL AFTER THE STATE COMMISSION HAS ORDERED AREA CODE RELIEF AND ESTABLISHED AN IMPLEMENTATION DATE

The *Pennsylvania Order*'s determination that state commissions are without authority to implement NXX code conservation and rationing measures until after the state commission has ordered area code relief and established an implementation date should be reconsidered by the Commission.[26] CCTA members are painfully aware that the rationing of numbers is a serious constraint upon a new facilities-based carrier's ability to enter the market. As such, code rationing should be a measure of last resort. However, in a state such as California, where serious NXX code exhaust problems abound, a prohibition on conservation and rationing measures until area code relief has been ordered and an implementation date set is not rationally justified. Once an area code is found by NANPA to be in jeopardy, there is simply no

[25] *Id.*, ¶ 40.

[26] CCTA recognizes that any California conservation measure must be consistent with lawful standards adopted by the Commission.

rational basis for prohibiting the implementation of state-imposed measures to protect the area code from exhaustion.

The short-sightedness of a federally-imposed limitation on NXX code conservation and rationing is underscored by the repeated circumstance, in California and nationwide, of continually shortened estimated NXX code exhaust dates in many area codes. For example, when the 415 NPA was split into 415/650, it was assumed that the split would last until the year 2009.[27] Instead, the 650 NPA quickly fell into jeopardy, and will likely be relieved with a new area code by sometime in the year 2000.[28] Similarly, it had previously been thought that the 707 NPA would not be threatened for a matter of years and yet only last week, NANPA declared the 707 NPA – the last California NPA not subject to a relief plan which was not considered threatened – to be in jeopardy.[29]

Moreover, as noted in California's petition for reconsideration,[30] and acknowledged in the Common Carrier Bureau's letter granting California a temporary exemption from the prohibition of the *Pennsylvania Order*,[31] public comment procedures required by California statutes engender a lag of two to three years between the time area code jeopardy is declared and the time a relief plan can be

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[27] *See* excerpt from CPUC Decision 96-08-042 (Aug. 7, 1996), a true copy of which is attached hereto as Appendix F.

[28] NANPA (Lockheed Martin IMS) NPA 650 Relief Planning Meeting, Nov. 9, 1998.

[29] *See* Appendix C hereto.

[30] *See* California PFR, Attachment 3.

[31] Appendix A hereto; *see also* Appendix B.

adopted by the CPUC. For all of the foregoing reasons, a prohibition on conservation and rationing measures until relief has been ordered and an implementation date set is unjustified.

The prohibition on rationing measures and conservation measures, such as rate center consolidation, mandatory pooling trials and NXX code recovery, until a relief plan is in place also violates the purposes and provisions of the 1996 Act. As is described in greater detail in the arguments that follow and in the exhibits attached hereto, the prohibition of conservation and rationing measures on asserted grounds of uniformity and administrative convenience turns the pro-competitive purpose of the 1996 Act on its head. With respect to uniformity, there is simply no valid reason why the Commission cannot adopt general interim guidelines which would allow the states to go ahead with necessary and innovative conservation and rationing measures while permanent guidelines are considered by the Commission. As will be discussed more fully below, regulatory delay at the federal level is simply not a legitimate reason for impeding state-ordered conservation and rationing measures which would support the unfettered availability of NXX codes for facilities-based CLECs serving residential markets.

CCTA urges the Commission to adopt interim guidelines that would allow states to ensure the availability of NXX codes for such new entrants in its order on reconsideration. The *Pennsylvania Order*'s flat prohibition, which can only be overcome by a request for exemption based on a state's particularized demonstration of dire need, is a real barrier to competitive entry which encourages incumbents to

utilize the relative unavailability of numbering resources for competitive entrants as a marketing tool to sustain their virtual monopoly positions.

The same is true with respect to administrative convenience. There is simply no valid evidence that reasonable state conservation and rationing measures – even measures which may vary in certain respects from state to state – will engender insurmountable administrative problems for NANC, NANPA or the Commission. Indeed, interim and permanent guidelines circumscribing state authority will minimize administrative problems while leaving the states the flexibility to act as laboratories in dealing with code exhaust problems. They will also accord the states the ability to deal with the myriad and highly varied efforts of incumbents to utilize number shortages to thwart competitive entry. CCTA urges the Commission to adopt in its order on reconsideration interim guidelines that leave states the flexibility to allow new entrants to compete.

In this connection, the *Pennsylvania Order*'s prohibition on conservation and rationing measures undermines the § 251 interconnection duty of carriers by reducing the availability of numbering resources for new entrants. Even with an interconnection agreement in place, a facilities-based carrier unable to satisfy the telephone numbering needs of its prospective customers, or perceived to be unable to satisfy those needs, cannot freely enter the market. The order also violates § 251's preservation of state access regulations because it prohibits states from requiring incumbents to develop solutions to numbering problems which would facilitate competitive entry. *See* 47 U.S.C. § 251(d)(3). The order also violates § 253's prohibition on state barriers to entry because the order's precluding states from

imposing conservation and rationing measures that address impediments to entry ties the states' hands and erects such a barrier.

The *Pennsylvania Order* also thwarts competitive entry by prohibiting states from implementing measures which would forestall the premature imposition of overlays which remain highly anticompetitive, even with the implementation of mandatory ten-digit dialing and local number portability.[32] Overlays allow incumbents the marketing advantage of telling the public that their customers will be able to obtain telephone numbers with the original, familiar and highly preferred area code, rather than the new area code.[33] The public continues to express its perception that the old, familiar area code is more valuable and prestigious than the less-recognizable overlay area code.[34] With an overlay, the "prestigious" area code will be largely under the control of the incumbent. In contrast, the less-valued overlay code will be the stock in trade of new entrants. CCTA is concerned that rather than choosing a local service provider based on features, service and price, consumers will instead will choose (and currently are choosing) a provider based on area code.

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[32] It is premature to assume that local number portability is in fact available. While the Commission's deadline for the provision of such portability has passed, new entrants are frequently unable to port numbers effectively. The frequency of porting problems reminds us that incumbent LECs have little incentive to facilitate the porting of numbers (and customers) to competing carriers.

[33] *See* City of Long Beach letter expressing unwillingness to take service from a new entrant if such required a change of area code, a true copy of which is attached hereto as Appendix G.

[34] *See* Statement of the CCTA regarding the proposed 415 NPA relief plan (Dec. 1998), a true copy of which is attached hereto as Appendix H. The point is further underscored by the public's consistent preference for area code splits over overlays. *See* Summary of Area Code Customer Preference Surveys Submitted to the CPUC, a true copy of which is attached hereto as Appendix I.

Where an overlay is ordered, the incumbents will of course possess the overwhelming majority of numbers with the original area code.[35] An incumbent has an assured inventory of numbers with the preferred area code through the "churn"[36] of its lion's share of NXX codes in the familiar NPA. This marketing advantage is not available to new facilities-based entrants that have few or no numbers to "churn."[37] Accordingly, since the deferral of conservation and rationing measures may lead to the premature imposition of overlays, the rule announced in the *Pennsylvania Order* is anticompetitive for this reason as well.

The Commission's understandable desire for uniformity and administrative convenience in numbering policy cannot, consistently with the 1996 Act, justify delaying, and in some cases barring altogether, CLECs from competing with incumbents.

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[35] *See* charts derived from LERG (April 1998) that depict the relative assignment of NXX codes in the 213, 310 and 415 NPAs, true copies of which are attached hereto as Appendix J.

[36] The term "churn" refers to a carrier's obtaining previously-assigned numbers from customers terminating service and reassigning those numbers to new customers. *See generally* Reply of California Telecommunications Coalition to "Emergency Petition" to Modify Decision 96-12-086, a true copy of which is attached hereto as Appendix K.

[37] *See generally* excerpts of transcripts of public hearings in Inglewood, San Diego, La Mesa and West Hollywood, California, true copies of which are attached hereto as Appendix L.

II

THE COMMISSION SHOULD EXPRESSLY CONFIRM THE AUTHORITY OF STATE COMMISSIONS, CONSISTENT WITH COMMISSION GUIDELINES AND THE PROVISIONS AND PURPOSES OF THE 1996 ACT, TO ESTABLISH REASONABLE NXX CODE CONSERVATION AND RATIONING MEASURES, INCLUDING PREFERENCES FOR FACILITIES-BASED ENTRANTS SERVING RESIDENTIAL MARKETS

The serious impediment to competitive entry engendered by the *Pennsylvania Order* is substantiated by the experience of new facilities-based entrants. One example is MediaOne, which seeks to offer ubiquitous facilities-based local exchange service to residential customers in its cable franchise areas in greater Los Angeles. MediaOne began offering residential telephone service in Culver City and West Los Angeles on April 1, 1998, when it became the only facilities-based CLEC competing in that service territory with ILECs Pacific Bell ("Pacific") and GTE California Incorporated ("GTEC"). However, as MediaOne indicated in pleadings before the CPUC, it was required to obtain enough NXX codes to cover all applicable rate centers spanning five separate NPAs – 213, 310, 714, 626 and 562. As it stated in its May 11, 1998, emergency motion before the CPUC,[38] as of that date it had been able to obtain only nine NXX codes, all of which were assigned to it pursuant to CPUC-sanctioned lotteries. This constituted a severe impediment to its

[38] A true copy of that pleading is attached hereto as Appendix M.

offering service in competition with Pacific and GTEC, neither of which has had to compete for scarce initial codes.[39]

Moreover, facilities-based carriers such as MediaOne have been constrained in offering service due to the paucity of NXX codes despite their enormous investment in telephony-ready facilities. Without granting states the immediate flexibility to assure the availability of NXX codes and telephone numbers to facilities-based CLECs, the *Pennsylvania Order* impedes and delays competition and creates stranded investment which significantly chills further investment in the costly facilities necessary to provide local exchange service. Indeed, the order harms not only the CLECs but also residential consumers patiently awaiting the fulfillment of the promise of competition extended by the 1996 Act.

If anything, the conservation and rationing measures authorized by the CPUC – and now prohibited by the *Pennsylvania* Order – have proven inadequate to ensure a level playing field between facilities-based CLECs serving residential customers and incumbents. As noted in MediaOne's CPUC filing, the current California lottery makes it impossible for such CLECs to accumulate enough NXX codes to offer credible service in a ubiquitous service territory. Thus CLECs like MediaOne can only roll out service on a rate center basis, potentially stranding their substantial investment outside the particular rate center. MediaOne, a state-

[39] *See also* Reply of MediaOne Telecommunications of California, Inc., to Oppositions to its Emergency Motion for NXX Code Allocation, a true copy of which is attached hereto as Appendix N; Cox California Telcom II, LLC's Response to the Emergency Motion of MediaOne Telecommunications of California, Inc., a true copy of which is attached hereto as Appendix O; and Response of the California Cable Television Association in Support of MediaOne's Motion for Immediate Allocation of NXX Codes, a true copy of which is attached hereto as Appendix P.

certificated CLEC obliged by its tariff to serve residential customers in its service territory,[40] is simply unable to fulfill its obligation to serve. Moreover, the absence of adequate numbering resources undeservedly tarnishes such a new entrant's reputation, as customers and competitors make claims of spotty availability of service, undermining the new entrant's effective competition with incumbents. The *Pennsylvania Order*'s prohibition on state-ordered conservation and rationing measures moves competition backwards from a *status quo* which is inadequate in the first place.

With incumbents possessing a huge embedded base of unassigned telephone numbers, the only way to assure fair competition and free entry is to allow states the latitude, subject to appropriate guidelines, to grant facilities-based CLECs serving residential customers a preference in the allocation of NXX codes. Such a preference would not constitute undue discrimination in favor of such CLECs and against incumbents because the *status quo* impedes entry. Thus, the Commission should clarify that states may, on an adequate record, fashion reasonable NXX code conservation and rationing measures which reasonably favor facilities-based CLECs serving residential markets. Without such a rule, there are not "adequate assurances that those carriers would have access to numbering resources."[41] CCTA urges the Commission to embrace this principle.[42]

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[40] MediaOne's obligation is evidenced by its Tariff Sheet No. 101-T on file with the CPUC, a true copy of which is attached hereto as Appendix Q.

[41] *Pennsylvania Order*, ¶ 40.

[42] The Commission has consistently demonstrated a sensitivity to the special needs of cellular carriers. (continued...)

CCTA recognizes that the Commission has directed NANC to provide guidelines for a uniform number conservation plan for North America. However, the Commission should also confirm state authority, consistent with appropriate Commission guidelines, to order meaningful mandatory number pooling trials. At the December 4, 1998, CPUC-ordered workshop on the implementation of number-pooling trials, incumbents Pacific and GTEC refused to participate in any physical number-pooling trials. Without the mandated participation of the incumbents in a real-world trial, it will be impossible to learn if number pooling can work. Until competitors build a customer base, almost all calls terminating in California are completed by incumbents. The exemption of incumbents from number pooling trials would be another impediment to developing solutions to current number shortage problems. The Commission should clarify in its order on reconsideration that states may, consistent with Commission guidelines, require mandatory number trials, such as single-line pooling, unassigned number porting and a pro-competitive version of 1,000-block pooling.[43] These approaches will facilitate reaching the incumbents' embedded base of numbers, a necessary prerequisite to fair competition between carriers.

(...continued)
However, it should remember that those carriers provide discretionary service, while facilities-based carriers serving residential markets such as CCTA's members have undertaken an obligation to provide basic local exchange service to residential customers. The Commission should not prohibit states from granting such carriers the numbering resources necessary to fulfill their lawful obligations.

[43] CCTA submits that elements of the 1,000-block pooling solution contained in the NANC's NRO Report, including contamination levels, inventory size, block assignment and switching exemptions, largely maintain the *status quo* and competitvely disfavor new entrants. *See* Minority Statement to NRO Report, a true copy of which is attached hereto as Appendix R.

The Commission should also clarify that states retain the authority to implement rate center consolidation. The State of California recently asked incumbent LECs to provide a list of rate centers in California that would be candidates for consolidation. Both Pacific and GTEC responded that in the entire State of California, there are no such candidates, effectively giving notice of their intention to thwart the CPUC's ability to provide numbering relief through rate center consolidation.[44]

The Commission should also acknowledge the continuing anticompetitive nature of overlays, even where ten-digit dialing and local number portability have been implemented, and that overlays will remain anticompetitive until conservation measures that reach into the incumbent's enormous base of unused numbers associated with the original area code are implemented.

The Commission should clarify that the authority to determine whether particular carriers subject to an NXX code rationing plan should receive one or more NXX codes outside the provisions of plan rests with the states and the Commission, not with non-governmental entities such as NANC and NANPA, and that the Commission itself will act to ensure that state determinations in this regard facilitate competition, should the states fail to do so. In this connection, the *Pennsylvania Order* invites a recommendation from the NANC "as to whether, in the future, the state commissions or the NANPA, Lockheed Martin IMS, should perform the function of evaluating whether a carrier that is subject to an NXX code rationing plan

[44] *See* Pacific and GTEC letters, true copies of which are attached at Appendices S and T.

should receive an NXX or multiple NXXs outside the parameters of the rationing plan if it demonstrates that it has no numbers and cannot provide service to customers or is having to rely on extraordinary and costly measures in order to provide service."[45]

However, as above noted, neither the NANC nor the NANPA is a government agency charged by statute with responsibility for effectuating the public interest and the pro-competitive purposes of the 1996 Act. The Commission cannot reasonably expect that NANPA, which by definition is a neutral party, will favor a particular industry segment without standing accused of bias, even where that result is mandated by the 1996 Act. Nor can it assume that NANC, itself an industry group, will agree to favor one industry segment over another, no matter how necessary to the implementation of fair competition.

The determination of guidelines for legitimate preferences and exemptions in connection with conservation and rationing measures, as well as the application of those guidelines in particular cases, should properly be assigned to state commissions. Further, if state commissions fail to act in accordance with the pro-competitive purposes of the 1996 Act, the Commission should stand ready expeditiously to reverse their actions under the barrier to entry prohibition of § 253(a) and related provisions.

Finally, in taking the actions requested in this petition for reconsideration, the Commission should be mindful that new facilities-based entrants have made significant network investments in order to compete with incumbents and

[45] *Pennsylvania Order*, ¶ 51.

that delay in and limitations on their fair access to NXX codes create serious impediments to competitive entry. The Commission should therefore act expeditiously in its order on reconsideration to establish any necessary interim guidelines and to confirm state authority to adopt reasonable conservation and rationing measures which promote competition and are consistent with the purposes of the 1996 Act.

CONCLUSION

The daunting challenge of developing solutions for difficult and highly contentious number exhaust problems constitutes an opportunity for the Commission to utilize the meaningful federal/state partnership it has long espoused. In drawing the line between the realm in which the states may address number exhaust issues and the area in which action by the Commission on such issues is required, the Commission should foster and encourage reasonable state innovation which is consistent with

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Commission guidelines and the pro-competitive purposes of the 1996 Act. For the reasons stated, the Commission should reconsider the *Pennsylvania Order* and alter its determinations in accordance with the specific requests made herein.

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Respectfully submitted,

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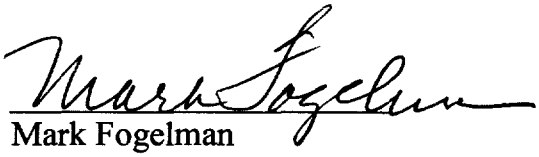
By: 
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